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IN THE

Supreme Court of the United States

October Term, 1969.

No. 454.

DANTE MARTIRE,

Petitioner,

v.

LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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LABORERS' LOCAL UNION 1058, A LABOR ORGANIZATION, THOMAS J. PECORA, PRESIDENT AND BUSINESS MANAGER AND LOUIS ELISE, SECRETARY-TREASURER, AS OFFICERS OF LOCAL UNION 1058,

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LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW.

Was a union member who held office at both the Local and District Council levels of his union deprived of any right protected by the Labor-Management Reporting and

Disclosure Act when he was removed from both offices by order of the District Council for negligence and incompetence in failing to require payment of the wage rates negotiated by the District Council, where the District Council concededly followed all the trial procedures set forth in its Constitution, the charges admittedly were supported by substantial evidence, and the removal was preceded by trial proceedings in which the union member was served with written specific charges, given a reasonable time to prepare his defense, and afforded a full and fair hearing?

COUNTERSTATEMENT OF THE CASE.

The narrow factual question presented by this case is whether a labor union member who was an officer at both the Local and District Council levels was deprived of any federally-protected right when he was removed from both offices by order of the District Council for negligence and incompetence in failing to require payment of the wage rates negotiated by the District Council. Since Petitioner has failed completely to set forth the facts relating to the action taken against him by the District Council,[1] a recitation of those facts, which is crucial for an understanding of the issues herein presented, follows.

At all times relevant to these proceedings, Petitioner Dante Martire was both a member and Business Manager of Construction, General Laborers and Material Handlers' Local Union 1058 ("local union"), and also an elected delegate and officer of the regional District Council of the Union for Western Pennsylvania (21-22a, 164a).[2] The District Council is an intermediate union body standing midway between the local union and the International and is designed to function as the "central representative body" of its affiliated local unions (Article II, § 1, District Council Constitution).[3] The District Council for Western Pennsylvania serves in this capacity for fifteen affiliated local unions in thirty-three counties in Pennsylvania (28-29a). One of its specific objects is "To promote respect for, compliance with and observance of all of the provisions of

1. For this reason alone, the Writ should be denied, pursuant to Rules 23(1)(e) and 23(4) of the Rules of this Court.

2. All numerical references followed by "a" refer to the page numbers in the one-volume Appendix in the Court of Appeals, a certified copy of which was filed with this Court by Petitioner.

3. All references to the Local and District Council Constitutions herein refer to Joint Exhibit 1, attached to Appendix in the Court of Appeals.

agreements by it and its affiliated Local Unions and the members thereof" (Article II, § 1(h), District Council Constitution). It is also empowered to "enter into . . . agreements with employers, for and on behalf of its affiliated Local Unions and to enforce and police the observance thereof by employees and employers, Local Unions and their members. . . . ," and to "exercise disciplinary power over all infractions or non-compliance with [such] agreements. . . ." (Article II, §§ 2(a), (e), District Council Constitution).

The charges which gave rise to the proceedings against Martire in the District Council stemmed from his activities in the capacity of Business Manager and delegate on the Allegheny Center Urban Renewal Project, a project which fell within the jurisdiction of both the local union and the District Council. On December 23, 1965, the District Council entered into, pursuant to the powers enumerated above, an agreement with the Constructors' Association of Western Pennsylvania which called for wage increases of 25 to 25½ cents per hour on all work projects within the jurisdiction of the District Council's affiliated local unions (88-89a, 149a). Martire was a member of the District Council negotiating committee on this agreement (88a, 149a). All members of the Constructors' Association were notified of these wage increases on or before December 23, 1965 (149a). The Allegheny Center Project was bid thereafter on January 21, 1966, and J-Jac Construction Company ("J-Jac"), a member of the Constructors' Association, signed a contract for work on the Project on March 7, 1966 (90a, 150a). Work began on March 14, 1966, and members of Laborers' Local Union 1058 were employed on the Project continuously from that date (91a, 150a).

Instead of paying the applicable 1966 rate of $3.71 per hour as required by the agreement of December 23, 1965, J-Jac posted and paid a wage rate of only $3.45½ cents,

which had been the applicable 1965 rate (150a). Martire and his son Dennis, an assistant Business Manager of the local union, visited the Project site on several dates and saw or should have seen this rate posted (150a). Thereafter, Martire and his son were specifically informed on several occasions that less than the contract rate was being paid by J-Jac. Thus, the union steward on the Project notified Dante Martire of the wage rate being paid in May of 1966, but neither of the Martires responded to his charges (151a). In addition, on June 7, 1967, a union member had a statement read to the local union membership alleging a failure by J-Jac to pay the contract rate on the Project, and charging the Martires with complicity in this practice (64-65a, 100a, 151a). The Martires were both informed of this statement (100a, 151a). On June 20, 1967, moreover, Dante Martire was specifically directed by the President of the District Council to investigate these charges (101a, 151a).

Despite these several notices to the Martires, it was not until after the appointment of an investigating committee by the District Council on July 12, 1967, that J-Jac agreed to pay the required rate of $3.71 per hour. J-Jac finally repaid the local union members nearly $10,000 in September of 1967, the sum representing the total underpayment for the eighteen month period of work on the Project (111a, 152a).

Because the Martires had permitted J-Jac to avoid paying the proper wage rate on the Project for an eighteen month period, charges of incompetence and negligence were filed against them with the Secretary-Treasurer of the District Council on September 13, 1967 (80-81a, 145-46a). This action was taken under the provisions of Article XII, § 9 of the Local Union Constitution, which directs that "In

jurisdictions where a District Council exists, all charges for violations of matters falling within the jurisdiction of the District Council, such as violations of agreements, working rules, etc., shall be filed with the Secretary-Treasurer of the District Council," and under Article II, § 2(e) of the District Council Constitution, which authorizes the District Council "To exercise disciplinary power over all infractions or noncompliance with agreements . . . , after proper notice and hearing as hereinafter provided." (32a, 146a).

The Martires received written notice of the specific charges of negligence and incompetence under Article II, § 2(e) on the next day, and were informed that a trial board hearing before the District Council had been set for September 26, 1967 (74-75a, 162-63a). On this latter date, the Martires appeared before the trial board of the District Council for a period of five to six hours, and testimony relating to the J-Jac wage payments was given by the Martires, the union steward on the Project, the President of J-Jac, and several union officials and members (37-38a, 82-83a, 148a). The ruling of the District Council removing Petitioner from his local and District Council offices, fining him five hundred dollars, and barring him from holding union office for five years was announced on September 27.[4] All of the procedures followed by the District Council have been stipulated to have been in accord with the District Council Constitution (75-80a, 84-86a, 128a, 164a), and the

4. Dennis Martire, who was not a party to the present case, was also ordered suspended from office and fined by the District Council (153-54a). This ruling was reversed on appeal, however, by the General Executive Board of the International Union, which upheld the District Council's ruling as to Petitioner, but ruled that Dennis Martire had reported the wage problem to Petitioner, and that Petitioner was responsible for permitting the 1965 wage rate to remain in effect (87a, 155-59a).

District Council proceedings have in no way been challenged as unfair. (Supplement to Petition pp. 7, 12 (Opinion of the Court of Appeals).) Petitioner's sole objection to the proceedings in the District Council is that they resulted not only in his removal from District Council office, which is unchallenged, but also in his removal from local union office without separate proceedings before the local union (Petition, pp. 2-3, 5).[5]

5. Significantly, Article XII of the Local Union Constitution and Article VIII of the District Council Constitution establish precisely the same procedure for "Charges, Trials and Appeals." The sole difference is in the name of the respective trial bodies.

ARGUMENT.

The Court of Appeals for the Third Circuit correctly decided this case, and there is no conflict of decisions, nor is there any important question of federal law meriting review by this Court presented on the instant record.

1. The single question decided by the Court of Appeals was the extremely narrow one of whether Petitioner was deprived of any right protected by the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") (73 Stat. 519, 29 U. S. C. § 401 et seq.) simply because he was removed from local union office for negligence and incompetence by the District Council of his union, rather than by the local union itself. The limited scope of the decision of the Court of Appeals is graphically demonstrated both by that Court's opinion,[6] and by Petitioner's repeated statements on the record as to what question was before the courts below. Thus, Petitioner consistently admitted that the District Council followed all of the trial procedures specified in its Constitution in the proceedings against him (75-80a, 84-86a, 128a, 164a). Petitioner also conceded that the District Council proceedings were in no way unfair, biased, or conducted in such a manner as to deprive him of a full and fair hearing (Supplement to Petition, pp. 7, 12). Finally, Petitioner did not contest the specific finding of the District Court that the charges of negligence and incompetence against him in the District Council were supported by substantial evidence (Petition, Appendix, p. 10, Finding of Fact No. 8; Supplement to Petition, pp. 7, 12). Thus, Petitioner's claim resolves itself to the bald assertion that

6. Petitioner did not print the Opinion of the Court of Appeals in his Petition. On August 29, 1969, however, Respondent was served with three copies of a "Supplement to Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit and Appendix," which reprints the Opinion.

he had an invincible right to be removed from local union office exclusively by the local union, a contention made even more strained by the fact that the procedures established by the District Council and Local Union Constitutions are precisely the same for "Charges, Trials, and Appeals," save for the names of the respective trial bodies.[7]

2. In support of his contention, Petitioner relies primarily[8] upon Section 101(a)(5) of the LMRDA, 29 U. S. C. § 411(a)(5), which provides that:

> "No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

As the Court of Appeals correctly held: "Section 101(a)(5) does not give the federal courts a general supervisory power over union disciplinary proceedings; the section merely provides that such disciplinary proceedings must accord the accused [the] three specified procedural safeguards" (Supplement to Petition, p. 11).[9] The allegation

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7. Article XII, Local Union Constitution, Article VIII, District Council Constitution, both of which appear in Joint Exhibit I, attached to the certified copy of the Appendix in the Court of Appeals filed with this Court.

8. Petitioner apparently relies also upon Sections 301 and 401(h) of the LMRDA in some undefined manner. The Court of Appeals fully considered those provisions, and its decision that they were inapplicable herein was clearly correct (See Supplement to Petition, p. 10).

9. See also *Cornelio v. Metropolitan District Council*, 243 F. Supp. 126 (E. D. Pa. 1965), *aff'd*, 358 F. 2d 728, 729 (3d Cir. 1966), *cert. denied*, 386 U. S. 975 (1967); *Null v. Carpenters District Council*, 239 F. Supp. 809, 814-15 (S. D. Tex. 1965); *Guarnaccia v. Kenin*, 234 F. Supp. 429, 436-41 (S. D. N. Y. 1964), *aff'd sub nom. Gurton v. Arons*, 339 F. 2d 371 (2d Cir. 1964).

that the "right" to be removed from local union office exclusively by the local union falls within the concept of the "full and fair hearing" mandated by Section 101(a)(5)(C) finds no support in either the legislative history or the case law.[10] As this Court recently held in *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U. S. 175, 193-95, the LMRDA of 1959 was "the first comprehensive regulation by Congress of the conduct of internal union affairs," and the Congress carefully minimized its intrusion into such affairs. Thus, the Senate Report stated as its guiding principles that:

> "The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.
>
> ". . . The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of

10. However, the Court of Appeals recognized that the presence of "special circumstances" might deprive a local union officer of a full and fair hearing if he was tried in proceedings before a District Council, where, for example, "the charges involved an issue with respect to which there was a conflict of interest between the local and the parent body." (Supplement to Petition, p. 12.) *Cf. Navarro v. Gannon*, 385 F. 2d 512 (2d Cir. 1967), *cert. denied*, 390 U. S. 989. No such "special circumstances" were alleged herein and neither of the courts below found any trace of bias against Petitioner or the local union in their review of the record.

trade union licensing and destroy union independence."[11]

A ruling that a union member who is guilty of negligence and incompetence and who, as here, is an officer at both the local and District Council levels, can be removed from local office solely by the local union, despite contrary provisions of the District Council Constitution, is precisely the type of intrusion calculated to weaken union-self government that was explicitly rejected by Congress in 1959. Such a course would be particularly objectionable where, as here, the removal from office grows directly out of a failure to require payment of collective-bargaining rates negotiated by the District Council for an area embracing the local union.

3. There is no conflict of decisions on the point presented herein. Petitioner's reliance upon *Salzhandler v. Caputo*,[12] *Grand Lodge v. King*,[13] *Navarro v. Gannon*,[14] and *George v. Bricklayers Union*,[15] is misplaced, since each of those decisions relies not upon Section 101(a)(5), but rather upon Sections 101(a)(1) and (2) and Section 609 of the LMRDA. As the Court recognized in the *King* case, this is a crucial difference:

> "Section 101(a)(5) guarantees to union members . . . that they shall be accorded procedural due process before being subjected to disciplinary action, for whatever reason. Section 609, on the other hand, has no bearing upon the procedures to be followed in dis-

11. S. Rep. No. 187, 86th Cong., 1st Sess., p. 7, reprinted in I Legislative History of the LMRDA of 1959, p. 403, and quoted in part in *NLRB v. Allis-Chalmers Mfg. Co., supra*, at 194.

12. 316 F. 2d 445 (2d Cir. 1963).

13. 335 F. 2d 340 (9th Cir. 1964), *cert. denied*, 379 U. S. 920.

14. 385 F. 2d 512 (2d Cir. 1967), *cert. denied*, 390 U. S. 989.

15. 255 F. Supp. 239 (E. D. Wisc. 1966).

> ciplining union members. . . . [S]ection 609 is not itself a source of additional independent rights, but is an enforcement provision designed . . . to effectuate rights conferred in other sections of the Act by making it unlawful to punish members who seek to exercise such rights. Punishment for the exercise of these rights is prohibited by section 609 whether inflicted summarily or after a full panoply of procedural protections." [16]

Here, as the Court of Appeals recognized (Supplement to Petition, p. 8 and n. 4), Petitioner was not disciplined for exercising any right guaranteed by Sections 101(a)(1) and (2), but was tried rather for negligence and incompetence in administering a collective-bargaining contract, a charge concededly supported by substantial evidence. As such, Sections 101(a)(1) and (2) and 609 have no relevance to this case.

Similarly, Petitioner's reliance upon *Vars v. International Brotherhood* [17] and *Allen v. International Alliance,* [18] is unfounded, as those decisions simply held that union officers were denied the "full and fair hearing" guaranteed by Section 101(a)(5) where one was convicted of charges unsupported by any evidence, and the other was tried for violating a constitutional provision inapplicable to him. Compare *Nelms v. United Association,* 405 F. 2d 715 (5th Cir. 1968). Here, on the other hand, the Court of Appeals found that Petitioner was properly tried under the District Council Constitution, and Petitioner conceded the existence of substantial evidence to support the charges against him. (Supplement to Petition, pp. 7, 12, 13-14.)

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16. *Grand Lodge v. King, supra,* note 12, at 345.
17. 320 F. 2d 576 (2d Cir. 1963).
18. 338 F. 2d 309 (5th Cir. 1964).

Finally, *Sheridan v. United Brotherhood* [19] and *Pittman v. United Brotherhood* [20] involved only the question as to the individuals protected by Sections 101(a)(5) and 609, and the Court of Appeals herein specifically held that Petitioner was entitled to, and received, all the procedural safeguards required by the former provision. (Supplement to Petition, pp. 8-9.) Thus, no conflict of decisions exists on the question presented herein.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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19. 306 F. 2d 152 (3d Cir. 1962).
20. 251 F. Supp. 323 (D. Fla. 1966).